

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

STRUDEL HOLDINGS LLC and
AVR AH LLC,

Debtors

AVR AH LLC et al.

Appellants

AVR AH LLC; STRUDEL HOLDINGS LLC;
CHARIF SOUKI; and KARIM SOUKI,
CHRISTOPHER SOUKI, and LINA RIZZUTO,
as Trustees of the SOUKI FAMILY 2016 TRUST,

Appellants,

v.

NINETEEN77 CAPITAL SOLUTIONS A LP;
BERMUDEZ MUTUARI, LTD; WILMINGTON
TRUST NATIONAL ASSOCIATION, and UBS
O'CONNOR LLC,

Appellees.

Civil Action No. 4:24-cv-1378

Adv. Case No. 23-09003

**APPELLANTS' MOTION TO DISMISS APPEAL PURSUANT TO FEDERAL
BANKRUPTCY RULE 8023 (VOLUNTARY DISMISSALS)**

Appellants in this matter move for voluntary dismissal of their pending appeal filed on April 15, 2024. *See* Dkt. 1. Appellants move the Court to grant Appellants' motion and dismiss the instant appeal so that the bankruptcy court may regain jurisdiction and dismiss the adversary proceeding with prejudice. Appellees are unopposed to this Motion.

Federal Bankruptcy Rule 8023 provides that an "appeal may be dismissed on the

appellant's motion on terms agreed to by the parties or fixed by the district court." Fed. R. Bankr. P. 8023. Because an appellant may generally withdraw its appeal anytime, the Court has "discretion to grant such a motion unless special circumstances dictate otherwise." *In re Salas*, 2020 WL 32567, at *4 (D.D.C. Jan. 2, 2020) (granting voluntary dismissal under Rule 8023; noting that appeal was "docketed a little over one year ago," "neither fairness nor justice requires that this appeal proceed," and appellants "seek to litigate material issues of fact" at the bankruptcy court).

Here, Appellants respectfully move the Court to grant voluntary dismissal. Proceedings before the bankruptcy court have effectively concluded. *See* Bankruptcy Petition No. 23-90757, Dkt. 492 (Order Granting Debtors' Emergency Motion to Approve Settlement Term Sheet and Dismissal of Chapter 11 Cases); Dkt. 500 (Notice of Conditions Satisfied for Dismissal of Chapter 11 Cases); Dkt. 501 (Order Dismissing Chapter 11 Cases). Moreover, the parties have filed a stipulation and agreed order in the adversary proceeding below to dismiss the case with prejudice. *See* Adversary Pro. No. 23-09003, Dkt. 151 (Stipulation and Agreed Order Dismissing Adversary Proceeding). The bankruptcy court must have jurisdiction over the matter to enter the agreed order. But it currently does not have jurisdiction because of the pendency of this appeal. *Cf. Shepherd v. Int'l Paper Co.*, 372 F.3d 326, 329 (5th Cir. 2004) (perfected appeal divests trial court of jurisdiction); *accord In re Picht*, 403 B.R. 707, 711 (B.A.P. 10th Cir. 2009) ("same principle applies in the context of a bankruptcy court's order appealed to a bankruptcy appellate panel"). Dismissing the appeal will cause the bankruptcy court to regain jurisdiction. *See In re Salas*, 2020 WL 32567, at *4. That court may then dismiss the adversary proceeding with prejudice.

CONCLUSION

For these reasons, Appellants move the Court to grant Appellants' motion and dismiss the instant appeal so that the bankruptcy court may regain jurisdiction and dismiss the adversary proceeding with prejudice.

Dated: August 30, 2024

Respectfully submitted,

/s/ Timothy S. McConn

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CERTIFICATE OF CONFERENCE

I certify that on August 30, 2024, counsel for appellants corresponded with counsel for appellees and counsel for appellees indicated that they are unopposed to this motion.

/s/ Timothy S. McConn

Timothy S. McConn

CERTIFICATE OF SERVICE

I certify that on August 30, 2024, I caused a copy of the foregoing document to be served on all counsel of record via the Court's electronic filing system.

/s/ Timothy S. McConn

Timothy S. McConn